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Office of Personnel

26 June 1959

OFFICE OF PERSONNEL MEMORANDUM NO. 20-410-29

SUBJECT: Civilian Employment by CIA of Retired Military Personnel

1. GENERAL

- a. When a retired military person who receives retirement pay based upon military service is being considered for Agency employment, a determination must be made as to the applicability of the Dual Employment and Dual Compensation Statutes. Due to the complexities that can be involved in reaching a determination and also due to numerous Comptroller General decisions that affect the application of the statutes, this resume and the appendix have been compiled as a reference guide.
- b. Factors which may have a bearing on the applicability of the statutes include:
 - (1) Whether military service was as a regular or as a reservist.
 - (2) Whether military service was as an enlisted person, as a warrant officer, or as a commissioned officer.
 - (3) The specific reason for retirement.
 - (4) Whether the retired person had been advanced on the retired list.

2. DEFINITIONS

As used herein the following terms have the meanings indicated:

- a. Retired for Longevity - Retirement based on length of service, age, or other reasons except disability of any kind.
- b. Retired for Service-Connected Disability - Retirement based on injury or incapacity incurred in line of duty except for combat disability.

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CIA INTERNAL USE ONLY

OPM 10-59

Approved For Release 2003/05/05 : CIA-RDP80-00679A000300010010-3

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- c. Retired for Combat Disability - Retirement based on disability incurred in combat with an enemy of the United States or on disability resulting from an explosion of an instrumentality of war in line of duty.
- d. Armed Forces - Military Personnel of the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, or Public Health Service.

3. APPLICABLE PUBLIC LAWS AND STATUTES

- a. Public Law 82-53 (50 USC 403f)

This law authorized the Agency to employ not more than fifteen retired officers or warrant officers of the Armed Forces notwithstanding Section 2, Act of 31 July 1894, 5 USC 62, as amended, whenever such officers have been retired for longevity. The law specifies that such persons must elect to receive either their retired pay or their civilian salary.

- b. Dual Employment Statute (Section 2, Act of 31 July 1894, 5 USC 62, as amended).

The Act provides that no person who holds an office with annual compensation of \$2500 or more shall hold any office to which compensation is attached, unless there is a specific authorization by law. However, the Act specifically excludes retired enlisted personnel of the Armed Forces who have been retired for any reason and retired officers of the Armed Forces who have been retired for injuries or incapacity incurred in line of duty. Retired military personnel, except those specifically excluded by the Act, are considered as holding an office to which compensation is attached and, therefore, may not be employed in a Federal civilian position except under a specific authorization by law.

- c. Dual Compensation Statute (Section 212, Economy Act of 30 June 1932, 5 USC 59a, as amended).

This Act provides that no person who is employed in a Federal civilian position shall be entitled to retired pay for service as a commissioned officer of the Armed Forces in excess of an amount which, when combined with the civilian salary, totals \$10,000 or more per annum. The Act further provides that if

OPM 10-59

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the retired pay exceeds \$10,000 per annum, the individual may elect either the retired pay or the civilian salary. The Act specifically excludes those commissioned officers who have been retired for combat disability.



GORDON M. STEWART
Director of Personnel

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Attachment

OPM 10-59

- 3 -

CIA INTERNAL USE ONLY

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| RETIRED STATUS | ACT OF 1894 (Dual Employment) | ECONOMY ACT OF 1932 (Dual Compensation) | CIA APPLICATION |
|--|--|--|--|
| 1. Regular commissioned officer retired for longevity | 1a. APPLICABLE (A retired regular commissioned officer "holds an office" within the meaning of this Act; 21 CG 1129.) | 1b. APPLICABLE (The Act places a limitation on the amount of retired pay for services as a commissioned officer while holding a Federal civilian position.) | 1c. May be employed in a civilian position under the provisions of P.L. 82-53. However, must elect either retired pay or civilian salary, irrespective of amount of either. |
| 2. Regular commissioned officer retired for service-connected disability | 2a. NOT APPLICABLE (The act excludes from its restrictions "retired officers...who have been retired...for injuries or incapacities incurred in line of duty".) | 2b. APPLICABLE (Same as 1b above.) | 2c. May be employed in a civilian position. However, only that portion of the retired pay can be retained which will not cause the combined civilian salary and the retired pay to exceed a rate of \$10,000 per annum (21 CG 1129). If the civilian salary is in excess of \$10,000 per annum, the entire retired pay is forfeited during the period of employment. |
| 3. Regular commissioned officer retired for combat disability | 3a. NOT APPLICABLE (Same as 2a above.) | 3b. NOT APPLICABLE (The Act excludes from its restrictions retirement for combat disability.) | 3c. May be employed in a civilian position and retain both the civilian salary and the retired pay. |
| 4. Regular warrant officer retired for longevity | 4a. APPLICABLE (A retired regular warrant officer "holds an office" within the meaning of this Act; 13 CG 60.) | 4b. NOT APPLICABLE (A warrant officer is not a "commissioned officer" within the meaning of that term as used in this Act; 37 CG 591.) | 4c. Same as 1c above. |

CIA INTERNAL USE ONLY

CIA INTERNAL USE ONLY

| RETIRED STATUS | ACT OF 1894 (Dual Employment) | ECONOMY ACT OF 1932 (Dual Compensation) | CIA APPLICATION |
|---|--|--|---|
| 5. Regular warrant officer retired for disability (either service-connected or combat) | 5a. NOT APPLICABLE (Same as 2a above.) | 5b. NOT APPLICABLE (Same as 4b above.) | 5c. Same as 3c above. |
| 6. Reserve commissioned officer retired for longevity or for service-connected disability, who is NOT a member of a reserve component or the National Guard | 6a. NOT APPLICABLE (A retired reserve commissioned officer does not "hold an office" within the meaning of this Act; Section 246, P.L. 82-476.) | 6b. APPLICABLE (Same as 1b above.) ** | 6c. Same as 2c above. ** |
| 7. Reserve commissioned officer retired for longevity or for service-connected disability, who IS a member of a reserve component or the National Guard | 7a. NOT APPLICABLE (Same as 6a above.) | 7b. NOT APPLICABLE (Members of any reserve component who have been granted retired pay under any statutory provision and who during the period of civilian employment continue to be members of a reserve component are excluded from this Act; 36 CG 808 and 35 CG 497.) | 7c. Same as 3c above. However, if membership in the reserve component is terminated during the period of civilian employment, the provisions of 2c above are thereafter applicable. ** |
| 8. Reserve commissioned officer retired for combat disability | 8a. NOT APPLICABLE (Same as 2a above.) | 8b. NOT APPLICABLE (Same as 3b above.) | 8c. Same as 3c above. |
| 9. Reserve warrant officer retired for any reason | 9a. NOT APPLICABLE (Same as 6a above.) | 9b. NOT APPLICABLE (Same as 4b above.) | 9c. Same as 3c above. |

CIA INTERNAL USE ONLY

CIA INTERNAL USE ONLY

| RETIRED STATUS | ACT OF 1894 (Dual Employment) | ECONOMY ACT OF 1932 (Dual Compensation) | CIA APPLICATION |
|---|--|--|------------------------|
| 10. Enlisted person re- tired for any reason | 10a. NOT APPLICABLE (An enlisted person does not "hold an office" within the meaning of this Act; 13 CG 60.) | 10b. NOT APPLICABLE (Retired enlisted persons are exempt from the re- strictions of this Act; 25 CG 521.) | 10c. Same as 3c above. |
| 11. Enlisted person re- tired for any reason and advanced to warrant officer on the retired list | 11a. NOT APPLICABLE (An enlisted person advanced to warrant offi- cer on the retired list is exempt from the re- strictions of this Act; 26 CG 271.) | 11b. NOT APPLICABLE (Same as 4b and 10b above.) | 11c. Same as 3c above. |
| 12. Enlisted person re- tired for longevity and advanced to a com- missioned officer rank on the retired list * | 12a. NOT APPLICABLE (An enlisted person advanced to a com- missioned rank on the re- tired list is exempt from the restrictions of this Act; 26 CG 271.) | 12b. APPLICABLE (If retired pay is com- puted on the basis of the pay of a commissioned rank, re- tirement is deemed to be "for or on account of services as a commissioned officer" - 26 CG 271. If the commissioned service was as a member of a reserve component, see 7b above.) | 12c. Same as 2c above. |
| 13. Enlisted person re- tired for service-con- nected disability and advanced to a com- missioned officer rank on the retired list | 13a. NOT APPLICABLE (Same as 12a above.) | 13b. APPLICABLE (Same as 12b above.) | 13c. Same as 2c above. |

CIA INTERNAL USE ONLY

CIA INTERNAL USE ONLY

| RETIRED STATUS | ACT OF 1894 (Dual Employment) | ECONOMY ACT OF 1932 (Dual Compensation) | CIA APPLICATION |
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| 14. Enlisted person re- tired for combat disa- bility and advanced to a commissioned officer rank on the retired list | 14a. NOT APPLICABLE (Same as 12a above.) | 14b. NOT APPLICABLE (Same as 3b above.) | 14c. Same as 3c above. |
| 15. Regular warrant officer retired for lon- gevity and advanced to a commissioned officer rank on the retired list | 15a. APPLICABLE (Same as 4a above.) | 15b. APPLICABLE (Same as 12b above.) | 15c. Same as 1c above. |
| 16. Regular warrant officer retired for service-connected disa- bility and advanced to a commissioned officer rank on the retired list | 16a. NOT APPLICABLE (Same as 2a above.) | 16b. APPLICABLE (Same as 12b above.) | 16c. Same as 2c above. |
| 17. Regular warrant officer retired for combat disability and advanced to a com- missioned officer rank on the retired list | 17a. NOT APPLICABLE (Same as 2a above.) | 17b. NOT APPLICABLE (Same as 3b above.) | 17c. Same as 3c above. |
| 18. Reserve warrant officer retired for any reason except combat disability and advanced to a commissioned offi- cer rank on the retired list | 18a. NOT APPLICABLE (Same as 6a above.) | 18b. APPLICABLE (Same as 12b above.) | 18c. Same as 2c above. |

CIA INTERNAL USE ONLY

CIA INTERNAL USE ONLY

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| 19. Reserve warrant officer retired for combat disability and advanced to a commissioned officer rank on the retired list | 19a. NOT APPLICABLE (Same as 6a above.) | 19b. NOT APPLICABLE (Same as 3b above.) | 19c. Same as 3c above. |

* Members of the Fleet Reserve and the Fleet Marine Corps Reserve who had permanent enlisted status but who have been placed on the retired list on the basis of temporary commissioned service (under provisions of Section 2a, P.L. 84-318), and members placed on the Navy retired list in officer status (under provisions of Section 6, P.L. 79-305) are not considered in an enlisted status and are therefore subject to the restrictions of the Act of 1894 (35 CG 657).

** Reserve officers retired under Title II or Title III, P.L. 80-810, are exempt from the restrictions imposed by the Economy Act of 1932, as amended, regardless of whether they held appointment in the reserves after retirement (CG Decision B-135719, 1 May 1959).

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